PINK

Polska Izba Nieruchomości Komercyjnych

Key tax topics for the real estate industry

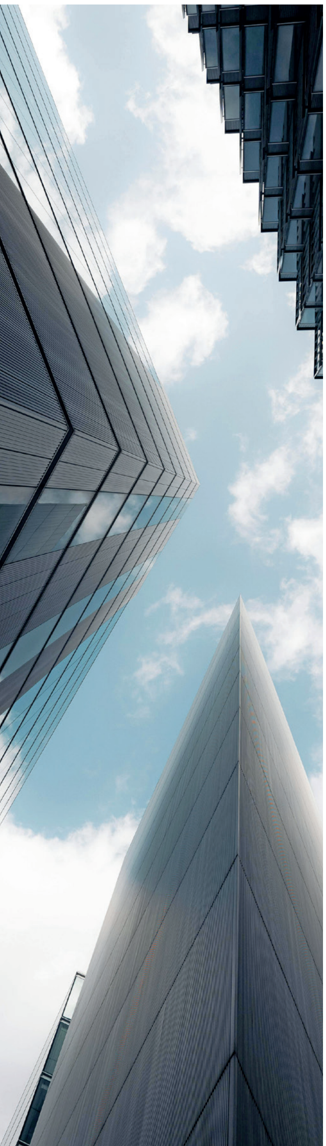
first half of 2025

TAX FLASH / JUNE 2025

Tomasz Krasowski
managing counsel
Dentons Tax Team

Łukasz Kopeć
associate
Dentons Tax Team

DENTONS



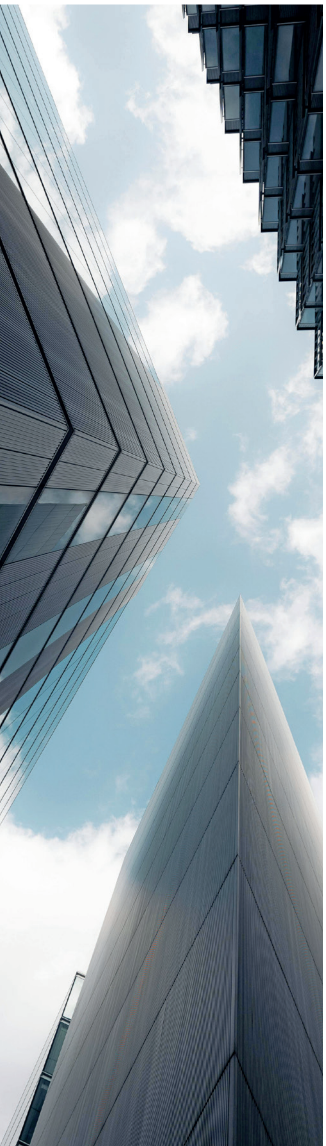
The tax landscape of the real estate market in the first half of 2025 – apparent calm, real challenges

The first six months of 2025 did not bring revolutionary changes to real estate-related tax legislation. However, this does not mean that tax law practitioners, indeed, financial and accounting services providers as such, could complain about a lack of work, quite the opposite in fact.

The biggest real estate tax law amendment in three decades, came into force as of 1 January 2025, and it has triggered a wave of new interpretative doubts and practical problems. The amended legislation has forced many entrepreneurs and their advisers to re-examine in detail the assets they hold and their tax qualification for real estate tax purposes in the new legal framework.

At the same time, a wave of activities aimed at deregulation has started in Poland as from February. Extensive work - both at governmental and ministerial level, as well as through expert initiatives such as Rafał Brzoska's team - has resulted in a number of interesting ideas for simplifying the legal system, including tax issues. Their implementation is announced for the second half of the year, but they are already generating great interest and numerous comments from entrepreneurs and experts. It is hoped that these initiatives will translate into real, significant changes to tax legislation, although at this stage it is still difficult to assess their actual impact.

There was also no shortage of important court verdicts in the first half of the year. Supreme Administrative Court judgments which confirmed that real estate companies can depreciate buildings classified as investment property were of particularly high profile nature. This is good news for companies that have not used this possibility so far; they can now apply for refunds of tax overpayments.



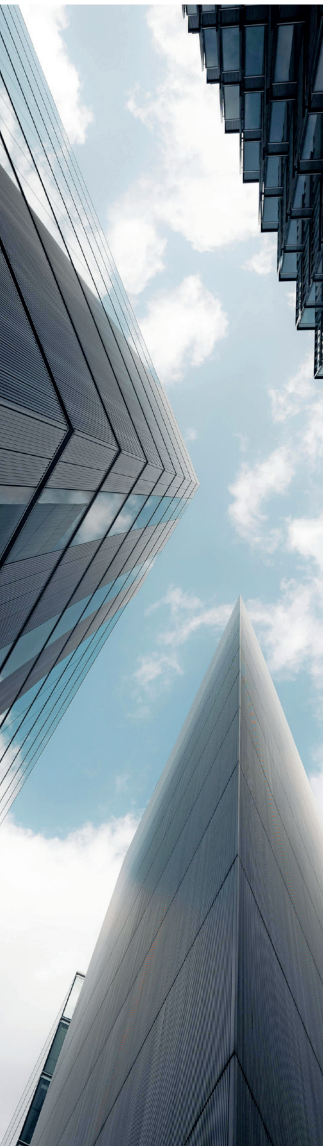
Traditionally, there was also no shortage of court verdicts on withholding tax, which has remained one of the most problematic topics for investors for years. In parallel, work was going on in the background on the final version of the Ministry of Finance's long-awaited official tax guidelines on withholding tax, which - after almost six years since the publication of the first draft - is finally to see the light of day in a final, compromise version that responds, at least in part, to the many voices also coming from the real estate market.

There was also a resounding verdict by the EU Court of Justice, which confirmed that the granting of a power of attorney can make an individual a VAT taxpayer in the context of the sale of immovable property and that a married couple can be treated as a single VAT taxpayer on the sale of real property.

The courts have also ruled on a number of other issues that may be relevant to real estate operators, such as, among others:

- the possibility of retroactive changes in depreciation rates;
- the lack of the right to include the expenses for the connection fee in the initial value of a newly constructed building;
- the tax on income from buildings (co called minimum CIT levy) in the case of investment properties not depreciated for tax purposes;
- the possibility of including a donation to the city as a tax cost;
- the possibility of recognizing the expenses of the lessee related to the early termination of the lease as a tax cost;
- the recognition as a tax cost of the consideration paid by the lessor to the lessee upon a change in the terms of the lease;
- the qualification of a development project as an organized part of an enterprise;
- the formal requirements for waiving the VAT exemption on the sale of real estate;
- tax on civil law transactions on loans granted to foreign entities.

We are pleased to present to you this TAX FLASH, in which we introduce and comment on these topics.



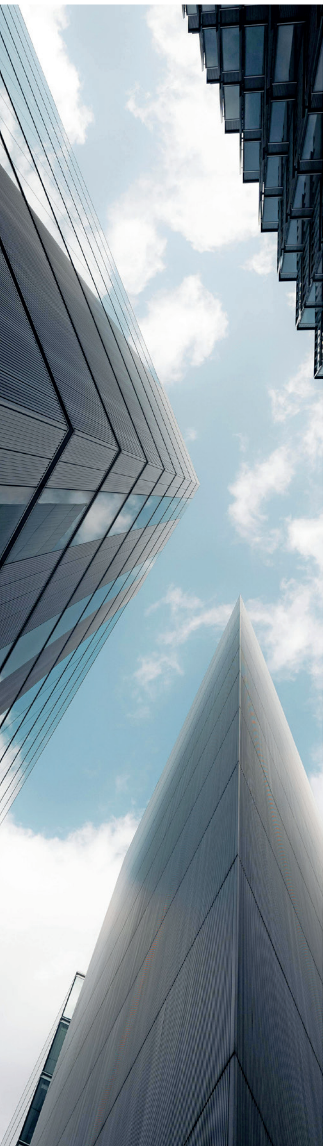
1. SAC verdicts on depreciation of buildings by real estate companies

The first six months of 2025 brought a number of Supreme Administrative Court (SAC) verdicts, long-awaited by the market, regarding the tax depreciation of buildings by real estate companies.

As a reminder, a regulation was introduced in 2022, whereby depreciation write-offs relating to buildings recognized as tax costs in given tax years by real estate companies, cannot be higher than depreciation or amortization write-offs for the wear and tear of fixed assets made in accordance with accounting regulations, charged in that tax year to the entity's financial result. On this basis (amended Article 15(6) of the CIT Act), the tax authorities argued in their individual interpretations that if a real estate company does not depreciate a given building for accounting purposes at all (because it qualifies a given asset for balance sheet purposes as a long-term investment), it also does not have the right to include depreciation write-offs on that building as tax deductible costs. Real estate companies have been therefore faced with a difficult choice between foregoing tax depreciation (and therefore paying higher tax) or changing accounting rules (resulting in lower taxation), but potentially disadvantageous from a business perspective.

Since 2022, due to numerous complaints from taxpayers, regional administrative courts (RACs) have issued a number of verdicts on the described issue. In the vast majority of cases, the RACs have sided with the taxpayers, holding that if a real estate company - in accordance with the accounting regulations - does not recognize buildings as fixed assets and does not make balance sheet depreciation write-offs on them, it can make tax depreciation without restrictions. Although there were also unfavorable verdicts, they were rather incidental.

A little over three years after the controversial amendment came into force and a series of RACs verdicts, on 28 January 2025 the issue was considered for the first time by the SAC, issuing verdicts in the joined cases ref. II FSK 1652/23, II FSK 788/23, II FSK 789/23, II FSK 987/23, II FSK 1086/23. The SAC, while indicating that Art. 15(6) does not completely exclude the right of real estate companies to tax depreciation, pointed out that this regulation sets



the maximum limit for tax depreciation in the amount of the hypothetical amount of depreciation that the company could make in accordance with the regulations of the Accounting Act. According to the SAC, it is therefore irrelevant how a real estate company qualifies its buildings for accounting purposes. However, if it does not depreciate its buildings for accounting purposes, it should calculate a hypothetical amount of depreciation and make tax depreciation only up to that amount. To everyone's surprise, the SAC thus presented a completely new way of interpreting the provision, in a way balancing the expectations of the tax authorities and the real estate sector. Nevertheless, the conclusions of these verdicts are clearly in favor of real estate companies, confirming that tax depreciation of buildings is possible.

In addition, in subsequent verdicts (dated 5 March ref. II FSK 896/23, 18 March ref. II FSK 246/24 and 3 April this year ref. II FSK 756/23), the SAC confirmed the full right of real estate companies to tax depreciation of buildings, regardless of the lack of accounting depreciation, and without the limitation of the hypothetical amount of balance sheet depreciation write-offs. The SAC thus adopted a position favourable to real estate companies, coinciding with the majority of previous RAC verdicts.

Comment

The SAC's jurisprudence to date gives real estate companies that do not depreciate buildings for tax purposes from 2022 onwards due to Article 15(6) of the CIT Act a real chance for a favorable adjustment of tax settlements. The SAC's verdicts confirm that there is a high probability of winning in a possible dispute with the tax authorities.

As such, these companies should consider:

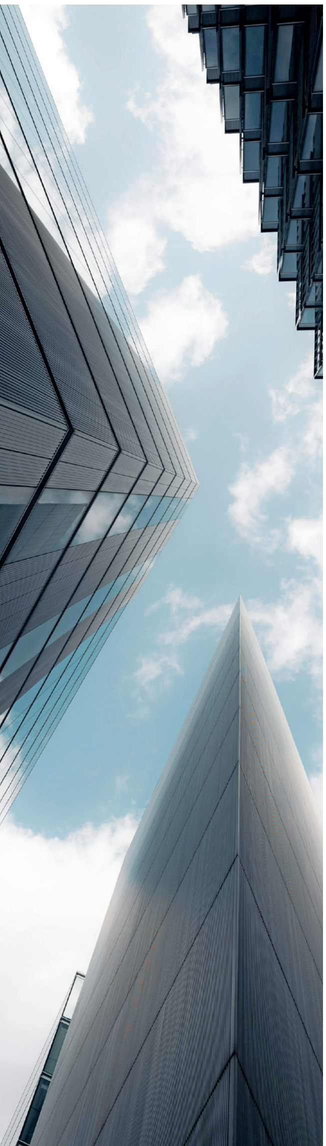
i) submitting claims for refunds of overpaid tax for years in which - due to the above-mentioned restrictions - they did not take into account tax depreciation deductions,

ii) a change in the existing approach to depreciation of buildings in subsequent accounting periods.

2. First settlement of the new real estate tax

At the beginning of 2025, the biggest amendment to the real estate tax (RET) legislation in 30 years came into force. For many businesses, including those in the real estate industry, it provided an opportunity to audit their assets for RET taxation under both the new and previous regulations, especially as the RET return for 2025 could exceptionally be filed by the end of March this year.

Despite repeated declarations by the Ministry of Finance that the purpose of the amendment was to clarify the law and eliminate interpretation doubts while maintaining the status quo in terms of scope of taxation (in other words, so that the tax burden would not increase in principle), the new regulations have already aroused numerous controversies at the stage of legislative work.



The definitions of a building and a structure, which are crucial for determining the scope of taxation, have been changed. A list of structures subject to RET taxation has been introduced to the Act on Local Taxes and Fees in the form of an annex. Key definitions of permanent attachment of an object to the ground and construction works were also added.

Significant doubts for the commercial real estate sector were introduced primarily by the new definition of a building, according to which facilities in which loose materials, materials occurring in pieces, or materials in liquid or gaseous form, whose basic technical parameter determining their purpose is capacity, are not deemed to be buildings. At the same time, these types of facilities, commonly referred to as storage facilities, are explicitly indicated in the annex to the Act as structures subject to RET and thus taxed not on the square meters of their usable area, but on their value (at a rate of 2%). This implies a significantly higher RET burden. At the outset, there was a risk that the change, which was intended to put an end to long-standing disputes over the tax classification of tanks, silos, grain elevators or similar facilities, could in practice also lead to typical, building-based large-area warehouses or high-storage warehouses being recognized as structures. Fortunately, practice has not moved in this direction.

No less controversial was the question of the taxation of internal building installations, particularly elevators. In practice, the question has arisen as to which installations/devices can be regarded as an integral part of the building (thus not taxable under RET) and which as separate facilities (potentially taxable under RET). There have been claims that, under the new legislation, tax authorities may attempt to qualify internal building equipment such as elevators, transformers, air-conditioning units, roof PV panels or electric car charging stations as structures taxable with 2% RET as so-called building facilities, i.e. other technical facilities directly connected to the building and necessary for its use in accordance with its intended purpose. The vague criteria of ‚direct connection' and ‚necessary for use' unfortunately give the tax authorities wide scope for interpretation.

The newly introduced definitions of ‚construction work' and ‚permanent attachment to the ground' have also provided entrepreneurs with just as much work.

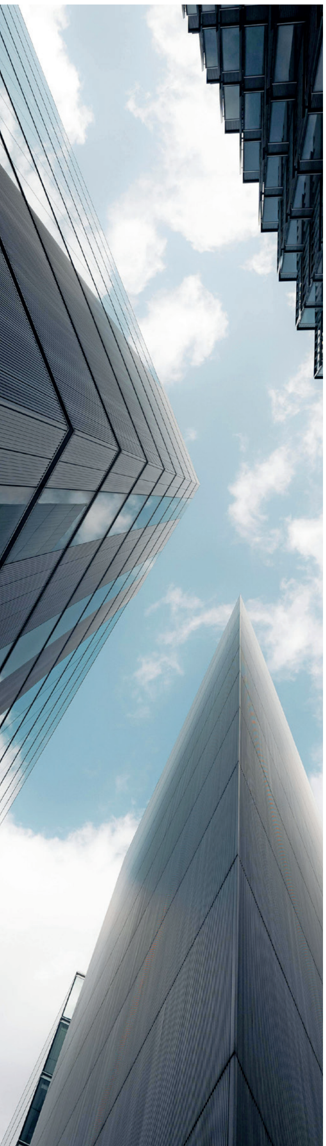
In the new state of the law, in order to be subject to the RET, an object must meet the premise of erection as a result of construction works, which is understood as works consisting of construction, reconstruction, extension, superstructure, alteration or assembly to which the provisions of the Construction Law apply. The aforementioned definition is so broad that, it seems, any activity regulated by the provisions of the Construction Law, will meet the requirement of erection as a result of construction works. Consequently, the erection of any building structures will meet the criterion under analysis - both those for which a construction permit is required and those for which a notification is required, or even structures whose erection under the provisions of the Construction Law enjoys an exemption from the aforementioned obligations to obtain a construction permit or notification.

Certain facilities, including, but not limited to, buildings, container facilities, billboards, marquee covers, pneumatic shells, or street vending or exhibition pavilions, must additionally meet the premise of being permanently attached to the ground in order to be subject to RET. According to the new regulations, this is „such a connection of the object with the ground, which ensures the object's stability and ability to withstand external factors independent of human action that may destroy, cause the object to move or shift to another place". The definition raises a number of questions, e.g. whether objects that resist natural forces solely due to their size or weight are permanently attached to the ground, or what type of attachment to the ground is „sufficient" for a permanent attachment to occur.

Comment

Companies with real estates that have not yet analyzed the impact of the amended RET legislation - although we assume there are not many - should do so immediately.

In our experience, many companies that have already carried out such an analysis have discovered all sorts of irregularities in their RET accounts - both minor and more serious.

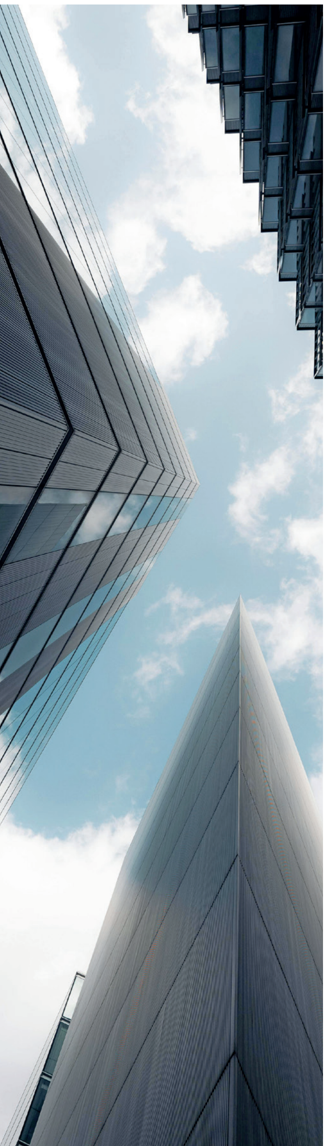


3. (De)regulatory gold rush

The beginning of February 2025 marked the beginning of a major deregulation push in Poland. Legislative work aimed at eliminating unnecessary regulations and administrative restrictions on doing business has been going on in parallel within Rafał Brzoska's ‚We Check' team, as well as the Government Deregulation Team and at the level of individual ministries. The work to date has resulted in hundreds of proposals for changes to the law, including in the area of taxes. Unfortunately, not all the proposals are strictly deregulatory in nature. On the contrary, many of them, although beneficial, imply the introduction of new or modified current legislation. The draft tax amendments published so far concern, among other things, the statute of limitations on tax liabilities, limiting reporting of tax schemes, raising the VAT exemption limit to PLN 240,000, eliminating the obligation to provide information on tax strategy, or extending the principle of resolving doubts in favor of the taxpayer. We can therefore expect a legislatively busy second half of 2025.

Comment

Any such initiative aimed at simplifying regulations and cutting red tape should be welcomed. We keep our fingers crossed for their success.



4. A subjective overview of the most interesting 2025 court verdicts on the real estate market

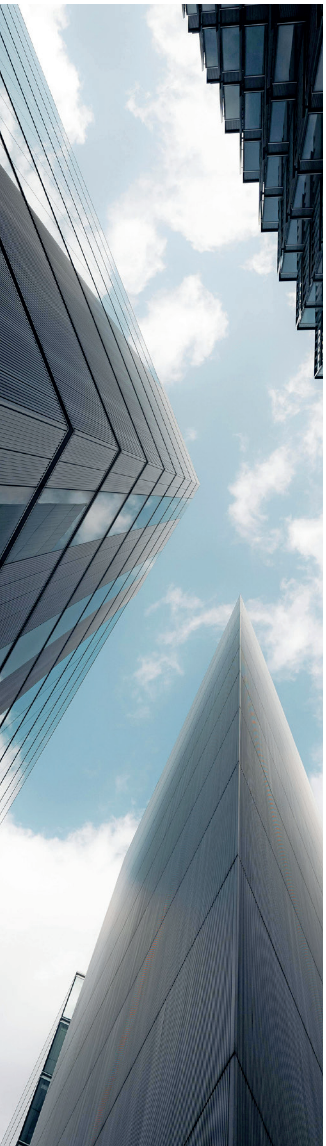
In the first half of 2025, there was no shortage of interesting and relevant verdicts both by Polish administrative courts and the Court of Justice of the European Union (CJEU) for the real estate market.

4.1. Exemption of dividends from withholding tax without the requirement of being the beneficial owner (verdict of the Supreme Administrative Court of 9 January 2025 ref. II FSK 564/22)

The SAC confirmed that the exemption of dividends from withholding tax, as provided for in the provisions of the CIT Act, does not depend on whether the company receiving the dividend is its beneficial owner. The court emphasized that the regulations do not contain such a condition, and the SAC's jurisprudence to date confirms this interpretation (e.g. judgments no. II FSK 14/23 or II FSK 78/22). In the case under analysis, the tax authority refused to issue a withholding tax clearance ruling, citing only the lack of the status of a beneficial owner on the part of the company. The SAC found this approach to be erroneous holding that such a premise does not in itself exclude the possibility of applying the exemption. The authority should have assessed all the other conditions stipulated in the legislation, rather than limiting itself to a single, unsubstantiated premise.

Comment

Article 22(4) of the CIT Act, which provides for a withholding tax exemption for dividends, does not make its applicability subject to the condition that the company receiving the dividend must be the beneficial owner of the dividend. Nonetheless, in practice, the tax authorities attempt to derive such an obligation from other provisions, including regulations on the elements of the taxpayer's representations when applying the ‚pay and refund' mechanism. Also in the draft withholding tax official guidelines of Minister of Finance (discussed also in the first half of 2025), it is indicated that the condition for taking advantage of the exemption provided for in Article 22(4) of the CIT Act is that the recipient of the payment has the status of the beneficial owner. In the consultation on the draft guidelnes, objections to this approach were raised, arguing that in this respect the draft violates the constitutional principle of legislating by statute and significantly undermines the principle of legal certainty. It is hoped that these comments will be taken into account in the final version of the guidelines.



4.2. Scope of the term ‚does not benefit from exemption from income tax on its entire income' (verdict of the Supreme Administrative Court of 30 May 2025, ref. II FSK 1489/24)

The SAC confirmed that the condition of ‚not being exempt from taxation on all income', is not met only in the situation of benefiting from a general tax exemption, i.e. a situation in which the taxpayer is completely exempt from taxation on all his income – regardless of its source.

The SAC unequivocally rejected the interpretation according to which this provision would also cover specific tax exemptions, e.g. concerning dividends only. Such an extension, in the SAC's view, would be inconsistent with the literal wording of the provision and the purpose of Directive 2011/96/EU (the so-called PSD Directive), which forms the basis for this specific tax exemption. The conclusions of the judgment correspond with the general tax ruling of the Minister of Finance issued in November last year (ref. DD9.8202.1.2024).

Comment

The SAC's verdict should clearly be assessed positively. Unfortunately, despite the Minister of Finance's general tax ruling in this regard, this year there have also been verdicts of the RAC in Lublin (e.g. verdicts of 21 March 2025, case file I SA/Lu 671/24), which continue to question such a favorable interpretation and deny the possibility to invoke the protection resulting from this general tax ruling in cases where decisions were issued before its announcement. It is to be hoped that in the future the administrative courts will follow the interpretation confirmed by the SAC.

4.3. No legal basis for applying the, look-through approach' to the payment of interest to an Italian company (verdict of the RAC in Gliwice of 20 May 2025, ref. I SA/Gl 1207/24) versus the possibility of applying the ‚look-through approach' to withholding tax (verdict of the RAC in Warsaw of 3 January 2025, ref. III SA/Wa 2385/24)

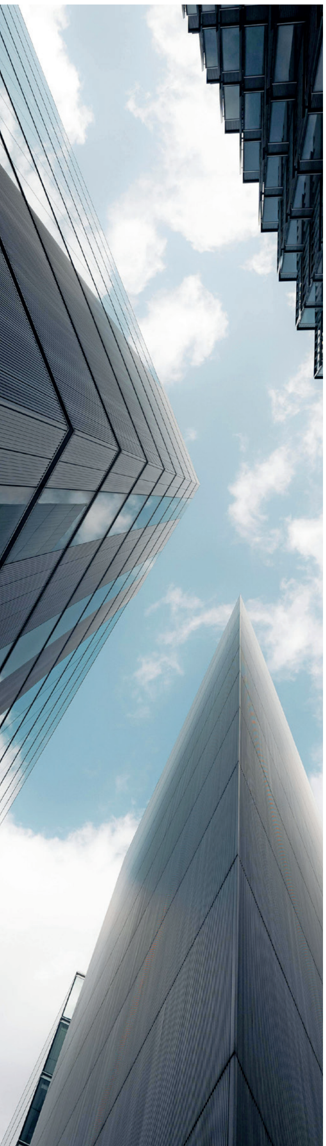
The RAC in Gliwice held that in the case of payment of interest on a loan directly to an Italian company, it is this company - and not the potential beneficial owner of the interest - that is the taxpayer earning the income in Poland. By the same token it is that company which is subject to taxation at source in Poland.The RAC ruled out the applicability of the so-called ‚look-through approach' in this case, pointing out that it does not derive from legislation, but only from case law, and is not binding on tax authorities or courts. In addition, in order for it to be applied, it would have to be shown that the intermediary (here: the Italian company) is fiscally transparent and does not make decisions on the funds transferred – which was not the case. This judgment exemplifies the persistent negative practice of tax authorities and some administrative courts, which deny the applicability of the look-through approach.

On the other hand, the RAC in Warsaw, in its judgment of 3 January 2025, held that when assessing the withholding tax obligation, it is crucial to determine the beneficial owner of the payment and not just the direct recipient. On the application of the withholding tax exemption to interest payments to UK entities, the RAC allowed for the application of the so-called ‚look-through approach', which allows the intermediaries in the payment chain to be disregarded and the final recipient of the payment to be taken into account - provided that it meets the conditions for the application of the double tax treaty preferences.

Comment

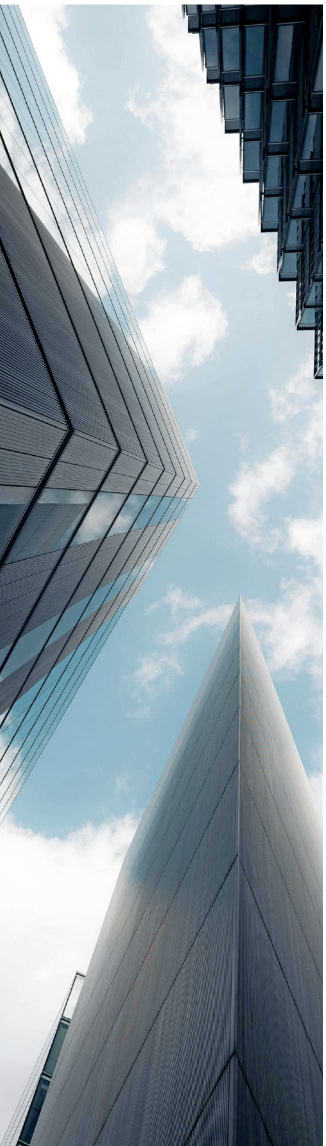
The verdict of the RAC in Warsaw stands in opposition to the current formalistic practice of the tax authorities, which consistently consider only the first entity receiving the payment as the taxpayer. The court noted that such an approach ignores the actual economic context of the transaction and may lead to unjustified taxation. A comparison of the theses of the verdict of the RAC in Warsaw and the RAC in Gliwice indicates that the approach to the look-through concept is not uniform. The draft official guidelines on withholding tax explicitly allow for the application of this concept, provided that certain criteria are met. It is to be hoped that the final guidelines of Minister of Finance on WHT will contribute to a uniform interpretation and increase certainty in the use of this institution.

In addition, those guidelines will most likely allow for the use of the so-called consolidated substance concept. This is an instrument whereby an entity may be deemed to be the beneficial owner of payments even if it does not itself bear the costs of the personnel and property resources necessary to conduct its business - provided that these resources are made available by other group entities. Confirmation of the applicability of this concept in the official WHT guidelines may significantly improve the situation of certain real estate groups in which - due to the business model adopted (e.g. the creation of holding companies for individual project companies) - it is not reasonable for the holding company to bear certain costs or employ staff on its own.



4.4. Married couple having a matrimonial joint property can be a separate VAT taxpayer / a person selling a property through a professional representative can be a VAT taxpayer (CJEU verdict of 3 April 2025 ref. C-213/24 Grzera)

The CJEU ruled that there is nothing to prevent a married couple in a regime of matrimonial co-ownership from being deemed as one VAT taxpayer on the disposal of immovable property if, as a married couple, they appear to third parties as making a sale of immovable property to-



gether, and the sale constitutes their joint business activity for which they share the economic risk.

Until now, in the situation of the sale of a property jointly owned by spouses, it was not clear which of the spouses was to be the VAT payer (if the sale was subject to VAT, of course). In practice, two solutions were adopted:

1. both spouses separately registered for VAT and paid VAT on the sale of the property on a 50/50 basis; or

2. registration as a VAT payer and payment of all tax was made only by one spouse who used the property for his or her business.

The CJEU drew attention to the existence of a VAT taxpayer yet unknown in Polish law, namely a married couple with statutory joint property.

In this verdict, the CJEU also ruled that a natural person who sells real estate constituting his or her personal property may be deemed to be a VAT taxpayer in respect of disposal of immovable property if he or she entrusts the preparation of the sale to a professional entity undertaking active real estate activities on his or her behalf.

Comment

The judgment may theoretically result in a revolutionary change in the approach to the VAT taxation of the sale of real estate by spouses who, for the purposes of such a sale, may be required, inter alia to register their marriage for VAT purposes and obtain a join Tax Identification Number (TIN). However, an earlier amendment to the VAT registration and TIN rules may be necessary to apply the verdict in practice.

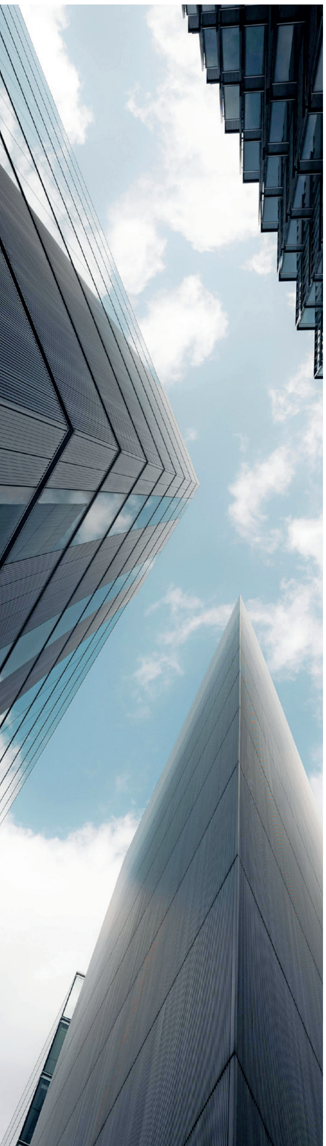
The VAT treatment of the sale of real estate of private assets by individuals has long been subject to controversy. This is because the tax authorities consider that the seller is acting as an entrepreneur and therefore should be deemed to be a VAT taxpayer in relation to the sale, even if he himself does not undertake any activities related to preparing the property for sale and does not actively seek a buyer for the property. It is sufficient for him to grant a power of attorney to, for example, the buyer to handle the administrative and construction formalities. The CJEU judgment gives tax authorities another argument that granting a power of attorney makes the seller an entrepreneur and a VAT taxpayer, however, the courts have already indicated more than once that such a circumstance alone should not determine whether a natural person is a VAT taxpayer (e.g. the SAC verdict of 23 April 2025, ref. I FSK 2150/21). In the case of the purchase of real estate from a natural person, we recommend each time a tax analysis in the scope of VAT taxation and in the case of any doubts to confirm VAT taxation (and the right to deduct VAT by the buyer) within the framework of a individual tax ruling. In the case of the purchase of real estate from married couples, it is also worth confirming in such a ruling who should issue the VAT invoice.

4.5. The right to retroactively change tax-depreciation rates (verdict of the Supreme Administrative Court of 7 May 2025 ref. II FSK 1028/22)

A taxpayer is entitled to change depreciation rates retroactively for previous tax years with effect from the ‚first month' of the relevant tax year. The regulations do not prohibit or limit the possibility to „retroactively" modify the amount of depreciation (deductible costs) made, and thus also the CIT tax base. The limitation of the right to make an adjustment is only the statute of limitations on the tax liability. This is another SAC verdict confirming the right to retroactively change depreciation rates. Similarly, the SAC had previously ruled, inter alia, in the judgments of 19 March 2025, ref. II FSK 856/22 and 18 February 2025, ref. II FSK 633/22.

Comment

If one does not know what the issue is, it is … tax planning. In practice, taxpayers, when it suits them, adjust their tax returns for previous years, showing lower tax depreciation write-offs than originally. This means that they reduce tax costs in the past, which, while extending the tax-depreciation period, allows them to carry these costs forward into the future. This is fully in line with the purpose of the provisions that allow for the reduction of tax burden. Indeed, according to the explanatory memorandum to the draft amendment to Article 16i(5) of the CIT Act (Parliamentary Paper No. 411 of 17 April 2002), „taxpayers will be able to plan for the maximum reduced depreciation rates in the period of incurring tax losses and return to the rates, i.e. higher tax costs, in the period of generating income, and thus affect the amount of tax loss and taxable income accordingly."



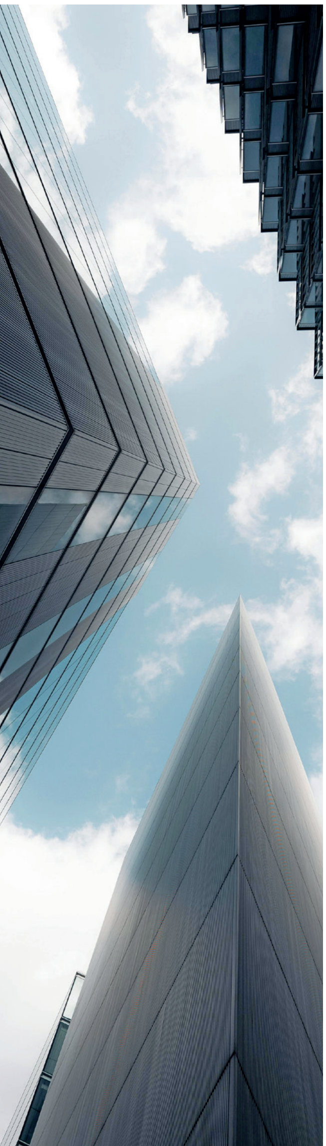
4.6. No right to include expenses incurred for the connection fee in the initial value of a newly erected building (verdict of the Supreme Administrative Court of 23 April 2025 ref. II FSK 959/22)

The SAC ruled that charges related to connecting a property to the power or gas grid are not treated as an element of the initial value of a fixed asset. Such expenditures are aimed at ensuring future access to utilities, which allows the property to be used in the course of business activities. In practice, this means that connection fees should be accounted for as indirect tax-deductible costs accounted for in accordance with general principles, and not as part of the tax depreciation of the fixed asset. They represent remuneration for access to technical infrastructure and have the nature of costs related to the company's day-to-day operations.

Comment

The issue of including individual costs incurred during the construction of buildings as the initial value of a fixed asset or as an indirect cost is extremely important and can have a significant impact on the tax result. Investors should each time carefully analyze how to correctly recognize these costs - whether they should be included in the cost of a fixed asset (depreciated or taken into account upon sale) or whether they can be recognized as deductible costs on an ongoing basis.

4.7. Tax on income from buildings (so called minimum CIT levy) and investment real estate outside the fixed assets register (verdict of the RAC in Warsaw of 29 January 2025, ref. III SA/Wa 2483/24)



The RAC ruled that buildings belonging to a company which are not included in the fixed asset register for balance sheet purposes and are not subject to depreciation must nevertheless be subject to tax on building incomes referred to in Article 24b of the CIT Act. The key point here is that they are fixed assets within the meaning of the tax legislation, regardless of how they are recognized in the accounts.

The court did not share the company's view that only those buildings on which depreciation is charged as a deductible expense should be taxed. According to the court, the legislation does not make tax liability dependent on whether the property is depreciated or how it is presented in the financial statements.

Comment

In practice, the RAC's position means that, for the purposes of tax on income from buildings, the key issue is whether the building actually meets the characteristics of a fixed asset under the tax legislation, rather than whether the building is or can be depreciated for tax purposes.

4.8. Donation to a city and tax-deductible costs (verdict of the RAC in Warsaw of 9 April 2025, ref. III SA/Wa 276/25)

The RAC ruled that funds transferred by a developer for the renovation of a communal road - despite the fact that the investment was to serve the future residents of a housing estate - could not be included in tax deductible costs. The company transferred the funds to the municipal company as part of its corporate social responsibility (CSR) activities, and the condition for their transfer was that a building permit be obtained.

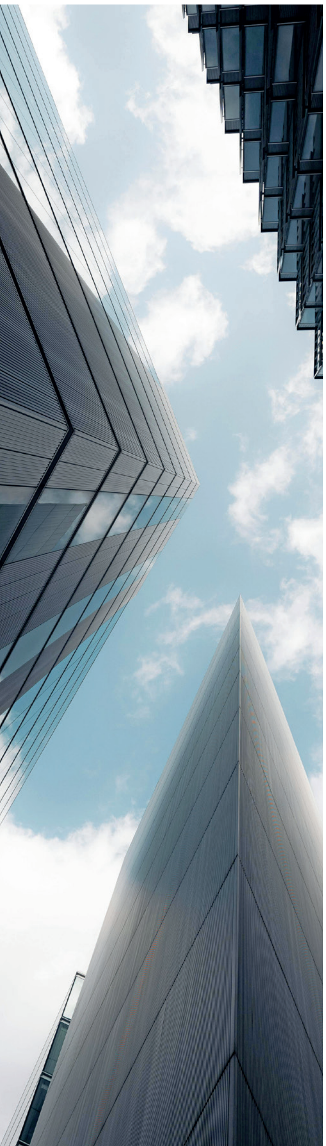
The court pointed out that there was no mutual exchange of benefits between the company and the city here - the transfer of funds was unilateral and qualified as a donation. Accordingly, under the applicable regulations, this type of expenditure is excluded from tax costs. This verdict emphasizes that even if the purpose of the donation is linked to future investment activities, this does not automatically mean that it can be recognized as a tax-deductible expense.

Comment

For any transfers related to the investment process, it is worth conducting an analysis of their tax consequences. Often the wording of the contractual provisions relating to such a transfer can have a significant impact on the tax consequences, so it is worth paying particular attention to this.

4.9. Possibility of including the lessee's expenses for the early termination of a lease agreement as tax deductible costs (verdict of the RAC in Wrocław of 6 February 2024, ref. I SA/Wr 825/24)

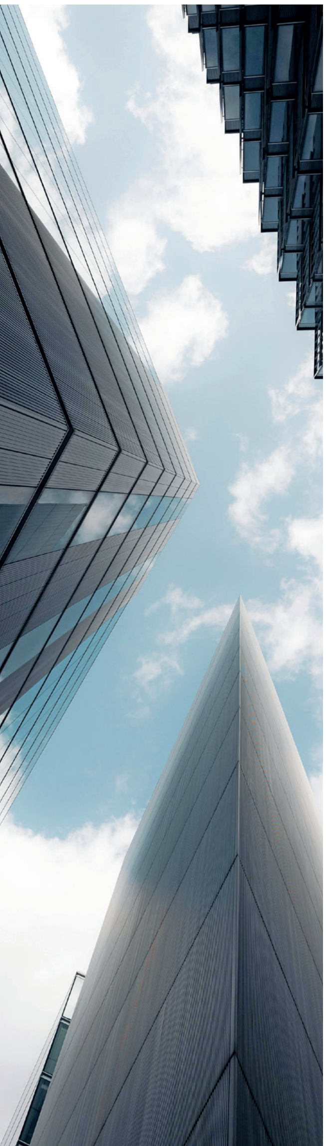
The RAC held that cash paid to the lessor in connection with the early termination of a lease agreement may constitute a deductible cost for the lessee. The court emphasized that actions aimed at protecting the capital and financial resources of a company should be treated as serving to secure a source of revenue. These expenses, although they do not generate direct revenue, may be economically justified and reasonable from the point of view of the business.



The court rejected the argument of the tax authority, which questioned the legitimacy of the conclusion of the rental agreement itself, pointing out that this is not subject to assessment in the tax ruling procedure. In addition, it was pointed out that the risk of doing business, including incurring losses, is a natural part of the income tax system. Consequently, expenses related to the termination of a contract - even if they are similar in nature to contractual penalties - may be considered a tax cost if they serve to secure or preserve a source of revenue.

Comment

The RAC verdict confirms that expenses incurred in connection with the early termination of a lease agreement may constitute a tax cost, provided that they are economically justified and serve to secure the source of revenue. The functional approach is key - it is not so much the direct link of the expense to revenue that matters, but rather its rationality from the point of view of the business activity conducted. Early termination charges occur quite frequently in practice, and may arise from a variety of circumstances - therefore, each time their tax implications should be assessed, the full factual context should be taken into account.



4.10. The compensation payment as a tax-deductible cost in the event of a change in the terms and conditions of a leasing agreement (verdict of the RAC in Warsaw of 27 May 2025, ref. III SA/Wa 247/25)

The RAC in Warsaw ruled that the compensation payment to the lessee, in connection with his loss of the right to acquire a part of the real estate under the terms of the original leasing agreement, may constitute a tax-deductible cost for the lessor.

Of importance in the case was the economic rationale behind the company's decision to terminate the existing leasing agreement to enable a new, more favorable agreement to be concluded, taking into account the current, higher market value of the leased property.

The RAC emphasized that actions aimed at limiting losses, improving financial efficiency or adjusting to market conditions, should be treated as rational and may constitute grounds for including the incurred expenses in tax costs. In the court's view, the tax authority wrongly questioned the causal link between the payment of the withdrawal and the generation of tax revenue.

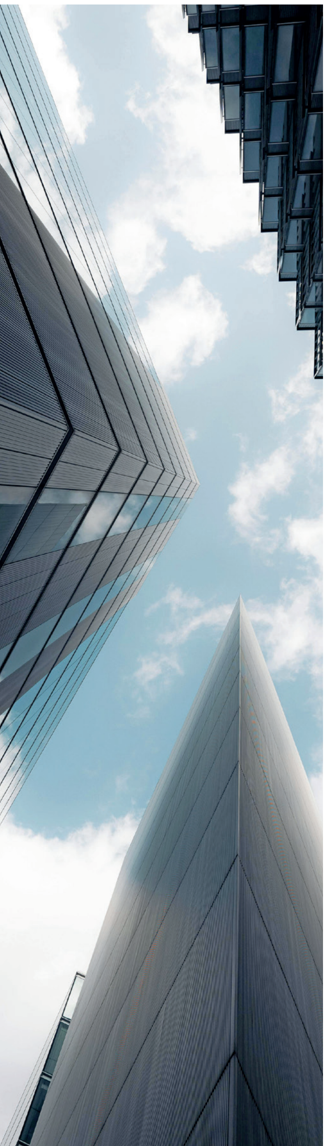
Comment

The court emphasized that measures aimed at improving financial efficiency and adapting to market realities deserve tax protection. The key is to demonstrate the economic justification and connection of the expense to the business, which was successfully proven by the company in this case.

4.11. Development project as an organised part of an enterprise (verdict of the Supreme Administrative Court of 28 May 2025, ref. II FSK 1356/24)

The SAC confirmed that a separate investment project as part of a development activity involving the multi-phase construction of a complex of office, service and residential buildings (for rent and for sale) together with garages, roads and technical infrastructure, may be considered an organized part of an enterprise within the meaning of the CIT Act.

In the SAC's view, assets such as the right of perpetual usufruct to the real estate (on which part of the work has already been carried out), rights and obligations under contracts related to the implementation of the project (including contracts for the performance of design work, obtaining environmental decisions, for the provision of investor supervision services, for the management of the project or loan agreements), copyrights to the building design and documentation, and rights under administrative



acts (e.g. building permits) together form an organized part of the enterprise. What is crucial here is the existence of a separate set of property and non-property components that allows the business to operate independently.

The SAC stressed that the fact that a project is part of a larger undertaking does not preclude its independence as a separate business purpose. Here it was shown that both the transferred activity and the activity remaining in the divided company met the conditions of organizational, financial and functional separation. Thus, the transferred part of the business can be treated as an organized part of the business, which is important, inter alia, for the tax consequences of the demerger transaction.

Comment

This verdict is of significant practical importance, particularly in the context of the tax consequences of company demergers and the disposal of development projects under construction. The qualification of a set of assets as an organized part of an enterprise - the disposal of which is, in principle, not subject to VAT - or as individual assets, subject to VAT, always requires detailed, individual analysis.

4.12. Resignation from VAT exemption on sale of real estate - formal requirements (verdict of the RAC in Warsaw of 17 April 2025, ref. III SA/Wa 196/25)

The RAC confirmed that the effective resignation of the VAT exemption on the sale of developed real estate requires an explicit declaration by notarial deed. The mere indication of the parties' data, the address of the real estate, the VAT identification number or confirmation of the VAT taxpayer status - although required - is not sufficient. These elements are supplementary and do not replace the formal declaration on the choice of taxation.

In the case under review, however, the court held that since the wording of the notarial deed clearly indicated that the transaction would be subject to VAT, the above formal requirements had been met. This means that the parties effectively waived the exemption and the transaction should be subject to VAT.

Comment

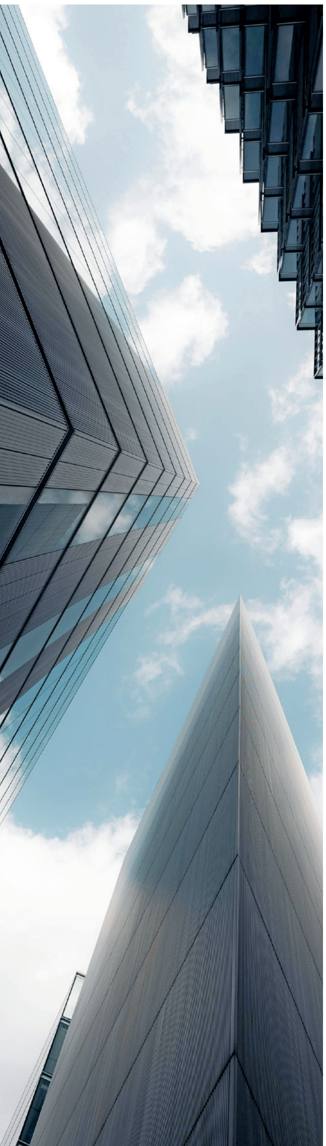
The judgment of the RAC reminds us that for an effective resignation from the VAT exemption on the sale of developed real estate, an unambiguous and clear statement contained in the notarial deed is crucial. In practice, it is worth taking care to ensure that the statement on the resignation of the VAT exemption is precisely worded in order to avoid doubts and ensure the tax certainty of the transaction.

4.13. Taxation of a loan granted to a foreign entity with tax on civil law transactions (verdict of the SAC of 12 March 2025, ref. III FSK 1670/23)

The SAC confirmed that cash loans granted in the form of a bank transfer are subject to tax on civil law transactions if the funds were in the territory of Poland at the time of transfer. The court held that the manner in which the funds were transferred - cash or non-cash - did not affect their qualification as movables (rather than property rights). Thus, even if the borrower is based abroad and the funds were transferred from a Polish account, the transaction may be taxable in Poland.

Comment

The verdict is of significant importance for companies granting loans to foreign entities. Until now, some entities have treated such loans as property rights exercised abroad, which exempted them from the obligation to pay TCLT. However, the SAC verdict indicates the need for a more cautious approach and a re-examination of tax obligations in such cases.



Prepared by:

Tomasz Krasowski, managing counsel
Dentons
D +48 22 242 51 31
M +48 782 500 482
tomasz.krasowski@dentons.com
View Dentons Biography Card Dentons – Tomasz Krasowski

Łukasz Kopeć, associate
Dentons
D +48 22 242 57 67
M +48 515 764 296
Lukasz.Kopec@dentons.com
View Dentons Biography Card Dentons – Łukasz Kopeć

Legal status as at 6 June 2025.

Polska Izba Nieruchomości Komercyjnych

The Polish Chamber of Commercial Real Estate

Since 2016, the Polish Chamber of Commercial Real Estate has brought together representatives from all sectors and services of the commercial real estate market in one organization, enabling them to have a real impact on the surrounding economic, political, and social environment. The PINK Association is both their representative and a platform for exchanging experiences, knowledge, and cooperation. By collaborating with other organizations, it promotes best practices in the commercial real estate market. The Association includes developers, investors, asset managers, property managers, design companies, construction consultants, real estate market advisors, as well as legal, tax, and financial advisory firms.

Publications of the PINK Association are available on the website:
https://stowarzyszeniepink.org.pl/en/